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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/747,740

12/29/2003

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037607-0257

2062

34099 7590 01/07/2008

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EXAMINER

CHANG, EDWARD

ART UNIT

PAPER NUMBER

4143

MAIL DATE

DELIVERY MODE

01/07/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/747,740	Applicant(s) WHIPPLE ET AL.	
	Examiner EDWARD CHANG	Art Unit 4143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on December 29, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on December 29, 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/27/2005, 7/16/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. This action is in reply to the application filed on 29th of December 2003.
2. Claims 1-24 are currently pending and have been examined.

Claim Objections

3. Claims 18 and 19 are objected to because of the following informalities: the wording of the claims suggests a Markush grouping, however applicant improperly recites the list in the alternative form by employing the conjunction *or*. Appropriate correction is required. See MPEP 2173.05(h).

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 6, 8, 15, and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per Claim 6:

- The claim 6 recites the limitation *the information*. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

As per Claim 8:

- The claim 8 recites the limitation *the impact*. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

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As per Claim 15:

- The claim 15 recites the limitation *the type of cash flow*. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

As per Claim 20:

- The claim 20 recites the limitation *the servicer*. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.
Appropriate correction is required.

7. Claims 11-19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-functional data. The claimed invention does not appear to produce a useful, tangible and concrete result at all, nor does it produce a physical transformation. Moreover, it appears as if the claimed invention is merely an abstract idea and therefore a judicial exception and not a recognized statutory category. A “packet” is not a subject matter for patent.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Examiner's Note: The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

9. Claims 1, 7, 11-16, and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Mazonas et al. (hereinafter "Mazonas"); (US 6,012,047).

As per Claim 1:

Mazonas as shown, also discloses the following limitations:

- *Decomposing each of a plurality of home mortgage loans into a plurality of sub-loan level cash flows; (See at least Column 2, Line 16+, "separate cash flow accounts")*
- *Repackaging the plurality of sub-loan level cash flows to form a plurality of financial assets backed by the plurality of sub-loan level cash flows; (See at least Column 2, Line 13+, where *manages* means repackaging)*
- *Making a determination of accounting rules that apply to plurality of financial assets; and (See at least Column 2, Line 21+)*
- *Storing and tracking accounting data for the plurality of financial assets based at least in part on the accounting rules. (See at least Column 2, Line 26+)*

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As per Claim 7:

Mazonas as shown, also discloses the following limitations:

- *Applying accounting logic configured to apply accounting rules to the plurality of financial assets. (See at least Fig. 5A~ Fig. 9)*

As per Claim 11:

Mazonas as shown, also discloses the following limitations:

- *packet description data having creation, purpose, and transaction information data describing the packet; (See at least Column 12, Line 38+)*
- *a data map including information on cash flows that flow into the packet; and (See at least Column 1, Line 12+)*
- *process instructions including information on cash flow processing for the cash flows and flow into the packet and accounting treatment for the packet. (See at least Column 2, Line 30+)*

As per Claim 12:

Mazonas as shown, also discloses the following limitations:

- *the packet description data, data map, and process instructions decouple inbound cash flows from outbound cash flows, thereby accommodating transactions with indirect segregation of cash flows. (See at least Column 2, Line 16+, Fig. 9)*

As per Claim 13:

Mazonas as shown, also discloses the following limitations:

- *transactions with less direct segregation of cash flows include transactions having cash flows in a non-fixed format. (See at least Column 2, Line 16+)*

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As per Claim 14:

Mazonas as shown, also discloses the following limitations:

- *the information on accounting is configured to facilitate accounting for the packet in compliance with accounting rules. (See at least Fig. 5A ~ 8)*

As per Claim 15:

Mazonas as shown, also discloses the following limitations:

- *packet description data includes packet type information indicating the type of cash flow associated with the packet. (See at least Column 2, Line 16+)*

As per Claim 16:

Mazonas as shown, also discloses the following limitations:

- *the packet is created based at least in part on the type of cash flow and the financial impact of one or more accounting rules based on the type of cash flow. (See at least Column 2, Line 22+)*

As per Claim 19:

Mazonas as shown, also discloses the following limitations:

- *sources of cash flows include any one of loan remittances, percentages of loan remittances, pool distributions, and securities. (See at least Column 1, Line 58+)*

As per Claim 20:

Mazonas as shown, also discloses the following limitations:

- *acquiring a home mortgage loan having a loan asset and a servicing asset; (See at least Column 2, Line 13+)*

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- *compensating a servicer that performs servicing of the loan during a term of the loan, wherein compensation provided to the servicer does not decrease through time during the term of the loan; and (See at least Column 3, Line 42+)*
- accounting for the compensation provided to the servicer, including relating the compensation to the value of the home mortgage loan. (See at least Column 10, Line 56+)

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claims 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mazonas (US 6,012,047) in view of Levine et al. (hereinafter "Levine"); (US 6,233,566 B1).

As per Claim 17:

Mazonas discloses the limitations as shown in the rejections above. But, **Mazonas as shown does not disclose the following limitation, but Levine does:**

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- *further comprising an indication of a packet state.* (See at least Fig. 15A, label 1528)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the Mazonas's financial packet as taught by Levine's data structure to indicate the current state of the packet to allow the user to see current status of the packet to effectively manage and control the data structure of the packet.

As per Claim 18:

The combination of Mazonas/Levine discloses the limitations as shown in the rejections above.

Furthermore, **Levine as shown, also discloses the following limitations:**

- *the packet state is capable of being any of the following packet states: pre-packet, pending packet, and production packet.* (See at least Fig. 15A, label 1528, three different states, Column 18, Line 62+)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the Mazonas's financial packet as taught by Levine's data structure to indicate the current state of the packet to allow the user to see current status of the packet to effectively manage and control the data structure of the packet.

13. Claims 2-6, 8-10, and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mazonas (US 6,012,047) in view of Frankel (US 6,070,151).

As per Claim 2:

Mazonas discloses the limitations as shown in the rejections above. But, **Mazonas as shown does not discloses the following limitation, but Frankel does:**

- *The plurality of sub-loan level cash flows include a first plurality of sub-loan level cash flows derived from principal payments of a borrower,* (See at least Column 3, Line 29+)

- *A second plurality of sub-loan level cash flows derived from interest payments of a borrower, (See at least Column 3, Line 29+)*
- *A third plurality of sub-loan level cash flows derived from borrower-paid fees. (See at least Column 1, 45+, "the difference ...is usually retained by the original mortgage lender as a fee")*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the Mazonas's method as taught by Frankel's system to separate the cash flows into principal, interest, and fees to effectively manage these cash flows. When separated, *these securities are attractive and useful to a variety of investors that utilize them to hedge their assets against interest rate risks or to achieve other performance objectives.* (Frankel, Column 3, Line 9)

As per Claim 3:

Mazonas discloses the limitations as shown in the rejections above. But, **Mazonas as shown does not disclose the following limitation, but Frankel does:**

- *The plurality of sub-loan level cash flows include a sub-loan cash flow that is a negative cash flow from a perspective of one or more owners of the plurality of financial assets, (See at least Column 21, Line 35+)*
- *The negative sub-loan cash flow being associated with expenses incurred in connection with the respective loan and arising from borrower default. (See at least Column 21, Line 35+)*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the Mazonas's method as taught by Frankel's system to consider the negative cash flow from the financial assets to make the cash flow more realistic, and effectively measure the performance of the financial assets.

As per Claim 4:

Mazonas discloses the limitations as shown in the rejections above. But, **Mazonas as shown does not disclose the following limitation, but Frankel does:**

- *The second plurality of sub-loan level cash flows derived from interest payments include a cash flow associated with servicing fees, a cash flow associated with guarantee fees, and a cash flow associated with pass through interest. (See at least Column 1, Line 45+)*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the Mazonas's method as taught by Frankel's system to separate the cash flows derived from the interest payments into pass through interest, servicing fees, and guarantee fees to effectively manage these cash flows. When separated, *these securities are attractive and useful to a variety of investors that utilize them to hedge their assets against interest rate risks or to achieve other performance objectives.* (Frankel, Column 3, Line 9)

As per Claim 5:

Mazonas discloses the limitations as shown in the rejections above. But, **Mazonas as shown does not disclose the following limitation, but Frankel does:**

- *Storing information pertaining to a mapping relationship between the plurality of financial assets and the plurality of sub-loan level cash flows, (See at least Column 5, Line 18+)*
- *Mapping relationship describing a manner in which cash flows flowing into each of the plurality of financial assets are traceable back to the plurality of sub-loan level cash flows. (See at least Column 5, Line 18+)*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the Mazonas's method as taught by Frankel's system to map and store the relational data linked to different cash flows. This would help the user to effectively and efficiently manage plurality of data.

As per Claim 6:

Mazonas discloses the limitations as shown in the rejections above. But, **Mazonas as shown does not disclose the following limitation, but Frankel does:**

- *Displaying the information pertaining to the mapping relationship to a human operator, (See at least Column 9, Line 60+)*
- *The displaying step being performed by a computer-implemented cash flow repackaging tool used by the human operator. (See at least Column 5, Line 18+)*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the Mazonas's method as taught by Frankel's system to display the steps and information related to the financial assets. This would allow the user to visually see and effectively manage the information related to the financial assets.

As per Claim 8:

Mazonas discloses the limitations as shown in the rejections above. But, **Mazonas as shown does not disclose the following limitation, but Frankel does:**

- *Displaying the impact of accounting on the financial performance of the plurality of financial assets. (See at least Column 26, Line 55+)*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the Mazonas's method as taught by Frankel's system to display different performance information related to the financial assets. This would allow the user to visually see and effectively manage the information related to the financial assets.

As per Claim 9:

Mazonas discloses the limitations as shown in the rejections above. But, **Mazonas as shown does not disclose the following limitation, but Frankel does:**

- *Analyzing financial risk associated with the plurality of sub-loan level cash flows and (See at least Column 3, Line 54+)*

- *Displaying a graphical representation of the financial risk to a human operator,*
(See at least Column 9, Line 60+)
- *The analyzing and displaying steps being performed by computer implemented financial engineering tools in consideration of accounting rules.* (See at least Fig.1, Column 5, Line 18+)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the Mazonas's method as taught by Frankel's system to analyze and display the financial risks to the owners of the financial assets. This would help the owners to be more aware of the risks involved in the financial assets to make the right decisions regarding their financial assets.

As per Claim 10:

Mazonas discloses the limitations as shown in the rejections above. But, **Mazonas as shown does not discloses the following limitation, but Frankel does:**

- *At least one of the plurality of financial assets is a financial instrument backed borrower paid fees and not by principal or interest, (see explanation below)*
- *the method further comprises paying an owner of the financial instrument with funds derived from proceeds of borrower paid fees.* (See at least Column 1, 45+, "the difference ...is usually retained by the original mortgage lender as a fee")

Frankel specifically does not mention about reinvesting the earned borrower paid fees (See at least Column 1, 45+, "the difference ...is usually retained by the original mortgage lender as a fee") to back up the financial instruments, but it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the Mazonas's method as taught by Frankel's system to pay the owner with the borrower's paid fees and to use the paid fees to reinvest and efficiently grow the financial assets.

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As per Claim 21:**Mazonas as shown, also discloses the following limitations:**

- *the loan comprises a loan asset and a servicing asset, (See at least Column 2, Line 13+)*
- *the loan asset comprising a right to receive loan payments from a borrower in connection with the loan, (See at least Column 3, Line 42+)*

Mazonas does not disclose the following limitation, but Frankel does.

- *the servicing fee portion of each loan payment decreases as an unpaid principal balance of the loan decreases. (See at least Column 1, Line 45+)*
- *the loan payments comprising a principal payment portion and an interest payment portion, (See at least Column 2, Line 3+)*
- *the servicing asset comprising a right to receive a servicing fee portion of the interest payment portion in exchange for performing servicing of the loan, (See at least Column 1, 45+, "the difference ...is usually retained by the original mortgage lender as a fee")*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the Mazonas's method as taught by Frankel's system to separate and divide the payment cash inflow into interest part, principal part, and the servicing fee part. When separated, *these securities are attractive and useful to a variety of investors that utilize them to hedge their assets against interest rate risks or to achieve other performance objectives.* (Frankel, Column 3, Line 9)

As per Claim 22:

The combination of Mazonas/Frankel discloses the limitations as shown in the rejections above.

Furthermore, Mazonas as shown, also discloses the following limitations:

- *compensation provided to the servicer is substantially fixed during the term of the loan. (See at least Column 3, Line 42+, "the payment of fixed")*

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As per Claim 23:

The combination of Mazonas/Frankel discloses the limitations as shown in the rejections above.

Furthermore, **Mazonas as shown, also discloses the following limitations:**

- *compensation provided to the servicer increases during the term of the loan.*
(See at least Column 3, Line 42+, "or variable periodic payments")

As per Claim 24:

The combination of Mazonas/Frankel discloses the limitations as shown in the rejections above.

Furthermore, **Frankel as shown, also discloses the following limitations:**

- *relating the compensation to the home mortgage loan includes valuing the compensation based on the value of the home mortgage loan.* (See at least Column 1, Line 45+)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the Mazonas's method as taught by Frankel's system to base the servicer's compensation on the value of the home mortgage loan. This would effectively encourage the servicer to perform at a higher level for the higher home mortgage loans.

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Conclusion

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **Edward Chang** whose telephone number is **571.570.3092**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **James A. Reagan** can be reached at **571.272.6710**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> <<http://pair-direct.uspto.gov>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

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or faxed to **571-273-8300**.

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December 18, 2007

/Edward Chang/ Examiner, Art Unit 4143

/James A. Reagan/Supervisory Patent Examiner, Art Unit 4143